



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03-123, 13-24, 22-408; FCC 22-97; FR ID 127353]

Order Denying Petition for Reconsideration of 2020 IP CTS Compensation Order

AGENCY: Federal Communications Commission.

ACTION: Denial of petitions for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) denies petitions for reconsideration of several aspects of the Commission's final rule setting compensation from the Telecommunications Relay Services (TRS) Fund for the provision of Internet Protocol Captioned Telephone Service (IP CTS). The document also denies a related request filed jointly by six IP CTS providers. In denying these petitions and requests, the Commission finds that they do not raise any new arguments or provide sufficient evidence that the Commission's initial treatment of the issues in question was incorrect or incomplete. Additionally, the Commission finds that it fully considered the issues, based its decision on the evidence in the record, and fully explained the rationale behind its decision.

DATES: This ruling is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Michael Scott, Disability Rights Office, Consumer and Governmental Affairs Bureau, at (202) 418-1264, or Michael.Scott@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, document FCC 22-97, adopted on December 21, 2022, released on December 22, 2022, in CG Docket Nos. 03-123, 13-24, and 22-408. The full text of document FCC 22-97 is available for public inspection and copying via the Commission's Electronic Comment Filing System.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

SYNOPSIS

Background

1. Section 225 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 225, requires the Commission to ensure that TRS are available to persons who are deaf, hard of hearing, or DeafBlind or have speech disabilities, “to the extent possible and in the most efficient manner.” TRS are defined as “telephone transmission services” enabling such persons to communicate by wire or radio “in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services.”

2. IP CTS, a form of TRS, permits an individual who can speak but who has difficulty hearing over the telephone to use a telephone and an IP-enabled device via the Internet to simultaneously listen to the other party and read captions of what the other party is saying. IP CTS is supported entirely by the TRS Fund, which is composed of mandatory contributions collected from telecommunications carriers and voice over Internet Protocol (VoIP) service providers based on a percentage of each company’s annual revenue. IP CTS providers receive monthly payments from the TRS Fund to compensate them for the reasonable cost of providing the service, in accordance with a per-minute compensation formula approved by the Commission.

3. Before 2018, compensation for IP CTS providers was determined by proxy, by averaging the payments made by state TRS programs to providers of an analogous service, Captioned Telephone Service (CTS). In 2018, the Commission determined that this approach had resulted in providers receiving compensation greatly in excess of the average cost actually incurred to provide IP CTS. Instead, the Commission proposed that compensation be determined as a weighted average of the actual allowable costs reported by the providers. The Commission also authorized, for the first time, the provision of IP CTS on a fully automatic basis, using *only* automatic speech recognition (ASR) technology to generate captions, without the participation of a communications assistant (CA).

4. In the *2020 IP CTS Compensation Order*, published at 85 FR 64971, October 14, 2020, the Commission adopted the average-cost methodology. To close the gap between compensation and average provider cost, while avoiding disruption to the provision of IP CTS from immediate application of the average cost methodology, the Commission implemented the resulting reductions in stages, by approximately 10% annually, until the compensation level reached the level of providers’ average allowable costs (plus a 10% operating margin). As a result of these decisions, the compensation formula

for IP CTS was reduced from \$1.9467 per minute in Fund Year 2017-18 to \$1.30 per minute in Fund Year 2021-22.

5. T-Mobile USA, Inc. (T-Mobile) and IDT Telecom, Inc. (IDT) filed petitions for reconsideration of the *2020 IP CTS Compensation Order*. T-Mobile requests reconsideration of the Commission's determination of provider compensation, arguing that the Commission did not have a reasoned basis for adopting a single compensation formula rather than a tiered structure and did not adequately consider certain costs. IDT, while not contesting the level of provider compensation, contends that the Commission should have reduced the applicable TRS Fund contribution factor to parallel the reduction in IP CTS compensation.

6. On May 25, 2021, six of the seven then-certified providers of IP CTS (the Joint Providers) filed a letter requesting that the Commission halt the reduction in IP CTS compensation from \$1.42 per minute to \$1.30 per minute scheduled for July 1, 2021. On July 1, 2021, the compensation adjustment to \$1.30 per minute became effective.

Final Ruling

7. *T-Mobile Petition and Joint Providers Request to Freeze Compensation*. The Commission denies T-Mobile's petition for reconsideration of the Commission's decision in the *2020 IP CTS Compensation Order* to adopt an average-cost methodology for IP CTS and to set per-minute compensation levels of \$1.42 and \$1.30 for TRS Fund Years 2020-21 and 2021-22, respectively. For similar reasons, the Commission also denies the related request of six IP CTS providers (Joint Providers), in a May 2021 *ex parte* letter, to reverse the \$1.30 formula previously set for 2021-22, and instead to freeze in place the \$1.42 formula adopted for the 2020-21 Fund Year, thereby continuing that higher compensation level for a second year.

8. The T-Mobile petition does not identify any reason warranting reconsideration. The Commission provided a reasoned explanation for both its decision to set a single compensation level based on average cost and its rejection of the tiered structure alternative advocated by some IP CTS providers. While T-Mobile claims that the Commission continued using its average cost methodology due to inertia and administrative convenience, the Commission cited numerous reasons for retaining the methodology, including that it relies on reasonably reliable and consistent cost data, which is subject to audit; provides

substantial incentives and opportunities for individual TRS providers to increase their efficiency and capture the resulting profits; and provides a measure of transitional stability at a time of technological change. Although T-Mobile disputes whether providers could actually increase their efficiency, the Commission reasonably concluded that the record indicated such improvements were likely, especially with the introduction of fully automatic IP CTS.

9. T-Mobile argues that average cost compensation would force providers to degrade service “by moving to automatic speech recognition (ASR) technology before this newer technology achieves the same quality levels as current IP CTS offerings. However, the Commission found that, based on then-current testing, ASR-only IP CTS *already* could deliver captions far more quickly than IP CTS provided with communications assistants, and with comparable or greater accuracy. More recent testing buttresses that assessment.

10. T-Mobile also argues that the Commission inappropriately rejected a “superior alternative,” *i.e.*, adoption of a tiered compensation structure. T-Mobile points to nothing in the record to support its claim that a tiered structure would be “superior,” other than the fact that several providers believed so. In any event, the Commission fully addressed this question in the *2020 IP CTS Compensation Order*, providing a detailed explanation for its finding that tiered compensation levels are not appropriate for IP CTS. T-Mobile offered no arguments not previously considered as to why the Commission should have reached a different result.

11. Third, T-Mobile argues that the Commission failed to account for the expenses and uncertainty associated with the COVID-19 pandemic. To the contrary, the Commission made significant efforts to ensure that the impact of the pandemic was appropriately considered in the IP CTS compensation decision, including extending the expiration date of the compensation period and directing the TRS Fund administrator to request and collect additional cost and demand data for January to June 2020 from CA-assisted IP CTS providers to file an updated 2020 TRS Rate Report. Based on the additional data reported by the providers, the TRS Fund administrator found that increased expenditures during the pandemic had been offset by increased call volumes, resulting in no net increase in per-minute costs, as a group or even individually. In fact, per-minute costs were *lower* due to increased demand during the

pandemic. Recognizing that the lower per-minute costs might not persist, the Commission set compensation in a conservative fashion, based on the *higher* pre-pandemic cost estimates.

12. T-Mobile argues that reliance on the TRS Fund administrator's report was misplaced because the report addressed only the initial months of the pandemic and did not reflect additional costs allegedly incurred later on. However, neither the rulemaking record nor T-Mobile's petition include any actual estimates of these allegedly unconsidered costs. Indeed, subsequent provider reports indicate substantial *declines* in per-minute costs for the period in question.

13. Finally, contrary to T-Mobile's contention, the Commission provided a reasonable explanation of its decision to continue setting a uniform compensation level for IP CTS, applicable to both the CA-assisted and ASR-only modes. As the Commission explained, absent sufficient information to assess the costs of the new ASR-only mode, it would have been arbitrary to attempt to devise a separate compensation formula for ASR-only IP CTS, and also would have run the risk of creating an inappropriate disincentive for adoption of this promising technology. In addition, the Commission reasonably relied on evidence that, to the extent that a single compensation formula encouraged IP CTS providers to increase their use of ASR-only captioning, the result would be an improvement in service quality.

14. The Commission also denies the request of the Joint Providers to maintain the IP CTS compensation level at \$1.42 per minute for the 2021-22 TRS Fund year. The Joint Providers' request is essentially a late-filed petition for reconsideration of the *2020 IP CTS Compensation Order*, which established a lower compensation level, \$1.30 per minute, for that period. In any event, the Commission finds no merit in the Joint Providers' arguments. Like T-Mobile, the Joint Providers argue that a compensation freeze is needed to protect service quality and that the COVID-19 pandemic introduced cost uncertainties for IP CTS providers. However, as addressed above, the record established that the \$1.30 per minute rate afforded an opportunity for providers to recover their reasonable per-minute costs of providing IP CTS, plus a reasonable operating margin. In addition, the uncertainties introduced by the pandemic and its effect on provider costs were already considered, addressed, and factored into the compensation plan adopted in the *2020 IP CTS Compensation Order*. Accordingly, the Commission

denies the petition of T-Mobile for reconsideration and the request of the Joint Providers for a freeze of the \$1.42 per minute compensation level.

15. *IDT Petition.* The Commission also denies IDT's petition for reconsideration of the Commission's *2020 IP CTS Compensation Order*. IDT argues that, when the Commission adopted a mid-year reduction in the IP CTS compensation formula for the 2020-21 TRS Fund Year (reducing the compensation level from \$1.58 to \$1.42 per minute), the Commission also should have made a mid-year reduction in the applicable TRS Fund contribution factor. However, the Commission's rules already address such circumstances by detailing a process to address the collection of excess funding for a TRS Fund Year, by applying the excess against the funding requirement for the *following* year. In accordance with this rule, in June 2021 the Commission took account of the surplus in the TRS Fund when determining the contribution requirement and contribution factor for the 2021-22 TRS Fund Year. The lower contribution requirement for 2021-22 thus offset, for all TRS Fund contributors, the excess funding provided in the previous year. Because the contributors already received the benefit of the excess being applied to the funding requirement for the following year, no further action is warranted. Accordingly, the Commission denies IDT's petition as moot.

ORDERING CLAUSES

T-Mobile's Petition for Reconsideration of the compensation formulas adopted in the *2020 IP CTS Compensation Order* IS DENIED.

The Joint Providers' request to freeze compensation at the \$1.42 compensation level IS DENIED.

IDT's Petition for Reconsideration of the contribution requirements adopted in the *2020 IP CTS Compensation Order* IS DENIED AS MOOT.

CONGRESSIONAL REVIEW ACT

The Commission will not send a copy of the *Order on Reconsideration* to Congress and the Government Accountability Office pursuant to the Congressional Review Act (CRA), *see* 5 U.S.C. 801(a)(1)(A), because it does not adopt any rule as defined in the Congressional Review Act, 5 U.S.C. 804(3).
Federal Communications Commission.

Katura Jackson,
Federal Register Liaison Officer.

